

MAINE HARNESS RACING COMMISSION
MINUTES OF MEETING
April 10, 2014
Gambling Control Board Conference Room
Department of Public Safety Building
45 Commerce Drive, Augusta, Maine

Commission Members Present: Barbara Dresser, Chair, James Tracy, Gary Reed Michael Timmons and Dirk Duncan.

Staff Members Present: Ron Guay, AAG, Henry Jackson, Miles Greenleaf, Zachary Matzkin, Ralph Canney and Carol Gauthier.

The minutes were not available.

ADJUDICATORY HEARINGS:

1. None.

UNFINISHED BUSINESS:

1. Commissioner Dresser stated that next on the agenda was the Status of Outstanding Complaints from February 25, 2014 Meeting. Mr. Jackson stated that he would update the Commission on the three individuals that were involved in the motion on February 25, 2014. He contacted them which were Mr. Bartlett, Sr., Mr. Robert Tourangeau, Sr., and Mr. Stanley Whittemore, and all have agreed to the conditions that the Commission voted on at the February 25, 2014 meeting.

Commissioner Dresser asked what else needs to happen. Attorney Guay stated that they had discussed perhaps sending a letter for continuance of the cases. Just to be clear the procedural status the cases have been continued until the June meeting. He believes all the parties have been given notice because they were present. We called the role for each hearing and on the record each party consented to have their cases continued; however, for the paper record it might be wise to put something in the file. Commissioner Timmons stated that he has a motion that has to do with the pending case of Mr. Bickmore. Attorney Guay stated that was one of the items he was going to give an update on that case. Commissioner Dresser asked to wait for the update and they would combine it into one.

NEW BUSINESS:

1. Commissioner Dresser stated that they would be reviewing a recommendation from the MHHA that urges the Commission to join the Association of Racing Commissioners International (ARCI). They all had a letter from Ms. Ireland on behalf of the MHHA stating her request. Ms. Ireland stated that their Board did vote unanimously to request that the MSHRC join the ARCI. She stated that the cost to join would be from \$3,000.00 to \$5,000.00, and she also stated in the letter that Maine is the only State that is not a member of the ARCI. Mr. Jackson stated that the Maine State Harness Racing Commission was a member in the '90s and the cost was \$5,000.00. Ms. Ireland stated that with her talks with Dr. Sams he stated to her that it would be beneficial for the State of Maine to join the ARCI. She also recommended that the fee would come out of all of the accounts in regards to the Commission's operating budget. Mr. Jackson stated that the reason that they gave up being members is because they couldn't afford it. At that point they were going through tremendous budget cuts to help balance the State's budget. Commissioner Dresser asked if that was before the self-funding came to be. Mr. Jackson stated yes, that was before 2009. We became self-funding in

2009. Ms. Perkins stated that one advantage of joining the ARCI was that they had weekly reports from their lab and testing that kept everybody updated on what was going on across the country. Commissioner Dresser stated that their options would be to vote on this today or allow the Commission to gather more information about the benefits and the exact cost would be. Mr. Jackson stated that he tried to get more information on this but they were tied up with their annual meeting. He recommended putting this item on the agenda for May meeting. Commissioner Dresser stated that in the meantime could you forward any information to them to review ahead of time. Mr. Jackson stated yes.

2. Commissioner Dresser asked those judges present to state their name and where they would be working this year. Peter Tommila stated that he is a presiding judge at Scarborough Downs. Pam Merrill stated that she worked at Bangor last year as an associate judge and at the fairs. Shane Bacon stated that he was an associate judge at Bangor last year. Ron Merrill stated that he was an associate judge on the Maine fair circuit and also a fill in as a paddock judge at Bangor. Commissioner Dresser stated that there are a couple of pending rules that you will need to be aware of when the time comes and one is the preference rule in Chapter 7, and once the change happens to the control medication rule that bute will no longer be appearing in the program. Mr. Jackson stated that he hopes that the judges while performing their duties will do so in accordance with the Commission's rules and statutes. There will be no favoritism shown so that everyone is treated fairly. He also hopes they use progressive discipline. Commissioner Timmons stated that he wanted to know how the judges respond and how much verbal abuse and foul language when some people are called either by the phone by the judge or because drivers don't like something that's happened. This happens quite frequent. It's not very professional for the sport. Do you pass it off or do you take that as complete disregard for any respect for your position. He doesn't see it getting better in fact he sees it getting worse. Mr. Tommila stated that when he has an inquiry they talk to the drivers involved. Sometimes in the heat of the battle their tempers are there. He takes that into consideration. At their horsemen's meeting, he always reemphasizes that they are professionals and he expects them to perform in a professional matter and he will perform and give them the same courtesy. If there is any disrespectful language there will be a consequence. Ms. Perkins stated that her concern was the sulkies. They should be checked each year and have a slip on them. Mr. Canney stated that earlier in the year the stickers that we get from the State of Maine wouldn't stick because it was too cold. Mr. May is waiting until it warms up to inspect the sulkies so that he can put them on the sulkies. Mr. Jackson stated that if there are any issues with the sulkies or anything else that is not appropriate take it to the State Racing Steward or the Paddock Judge.

Commissioner Dresser stated that they will move to public comment. Mr. Sweeney address the Commission regarding exporting their signal out of state. One of their expenses is sending their signal out of state. They developed a system that is sending their signal through the OTBs. It is not a solution that will work for their out of state markets. Currently they are negotiating with a vendor and hope to have it up and running by April 18, 2014. This will save Scarborough Downs a considerable amount of money. Commissioner Dresser asked if everything has smoothed out with the OTBs that they're regularly receiving the signal now. Mr. Sweeney stated that they are. There have been a couple of issues here and there, but Mr. Cobbett has been in touch with the OTBs when they send their signal out. Commissioner Dresser stated that the signal is not going out of state currently. Mr. Sweeney stated that is correct.

REPORTS:

a. Mr. Jackson reported to the Commission members that the Maine State Harness Racing Commission will be conducting a Judges School on April 14, 2014 at the Deering Building in Augusta, Maine. The presentation will be with TC Lane and Kent Hastings from the United States

Trotting Association. Commissioner Dresser asked if people that are not judges can they attend and will he be sending out notices to them. Mr. Jackson stated that people can attend, but the judges need to register for the accreditation and he will send out notices.

b. Mr. Jackson stated that the opening days of racing at Scarborough Downs were not as smooth as they hoped for. There were enough horses to draw for the opening day; however, the second day was cancelled due to weather. The following week Friday was cancelled due to a lack of horse supply and there continued to be issues with the track. He stated that the track is getting better every day. The frost is coming out but not completely. They have started out of competition testing.

Commissioner Dresser asked for an update on the status of the pending rule changes. Mr. Jackson stated that the final date for the written comment period of May 2, 2014. He recommends that they meet on May 15, 2014. Commissioner Dresser stated because of the change in the control medication rule because there's going to be a distinct change in the program, there is going to be no more bute; she was wondering if they should come up with a one line notification to bettors as to why the change is. She thinks it is going to be important that bettors are made aware of why there's this distinct change. Mr. Jackson stated that he has talked with Ms. Ireland and some of the veterinarians about it and maybe putting an "M" in the program meaning the horse is medicated and list the medications that it could be. We can ask them but we can't force them to do that.

Commissioner Dresser asked for the progress on the Ad Hoc Committee. Mr. Jackson stated that he would have Ms. Ireland report on that. Ms. Ireland stated that their last meeting was on the March 31, 2014. She stated that Mr. Malia has done a tremendous job directing the committee. There were a lot of substantive changes as well as grammar. They plan to meet next week to go over Chapter 17 again in hopes that they can move this rule forward expeditiously ahead of the other chapters because of the penalty phases. Mr. Jackson suggested that they take Chapter 11 and 17 together because of the crossovers in the chapters.

OTHER BUSINESS:

1. Commissioner Dresser stated that they will hear from the Hearing Officer on his update on pending adjudicatory hearings. Attorney Guay stated that there are questions to where we were on this matter. He stated that there wasn't anything in his report that would be informative towards a motion. Commissioner Dresser stated that they would start with a motion then, and depending on how that turns out we could go back. Commissioner Timmons stated that this motion could change future procedures and the Commission has the final say on any of it. He put this together based on his own research. He made a motion that Mr. Jackson, Executive Director, enter into a consent agreement with Eric Bickmore the final agreement like the rest of them would be reviewed and signed by Commissioner Dresser. He listed five areas that he feels needs to be part of that deal. A fine of \$2,000.00 be assessed with \$1,000.00 dismissed. That the trainer's license of Mr. Bickmore be placed on probation for 360 days. At the end of 180 days the executive director will if no further violations review this, and his probationary period could end. The purse money which was won \$1,277.00 be returned and redistributed. The horse Willy Mac would be barred from racing for 30 days. Once the consent agreement is reached and any violations of the medications rules by Mr. Bickmore during the time frames listed will result in automatic adjudicatory hearing with the Maine Harness Racing Commission. Commissioner Dresser stated that she just wanted to clarify; so any medication violation would result in an automatic adjudicatory hearing as to that new violation. Correct? We wouldn't be able to revisit this one or this one would be done. Commissioner Timmons stated yes. Commissioner Duncan stated that he missed the last meeting. He wanted to know if this was discussed at the last meeting. Attorney Guay stated that he would clarify. What they have is an allegation. The allegation has not been proved. They have to have a hearing. At the conclusion of

the hearing if it was proven true then you would decide what the punishment would be. What he is hearing from Commissioner Timmons is the consent agreement would require Mr. Bickmore to admit to the violation, correct. Commissioner Timmons stated right. Attorney Guay stated that Mr. Bickmore would have to admit that there was a positive test finding. That would be part of that deal. Commissioner Timmons stated that he was trying to get the executive director into a consent agreement so we wouldn't have to have an adjudicatory hearing, but protocol. He isn't a lawyer. Attorney Guay stated that it's not unusual to have a finding that's consensual meaning Mr. Bickmore and the State would agree that there was a violation of whatever is drafted. You don't need to have the hearing; you don't need to have the violation of evidence. What you are doing is agreeing to not contest or to plea to a different level of violation or whatever it is with the understanding this will be the consequence of pleading guilty, agreeing that you're guilty. Commissioner Duncan asked shouldn't that be done before this consent agreement is agreed to. Attorney Guay stated that typically not. The use consent agreements like this is not unusual in lieu of formal adjudication. He doesn't know what your history here is as a Commission. You also as Commissioners have the right to set your policies in terms of enforcement and prosecution. He certainly is not arguing this is what you should do but his understanding was that at one point last year for 2013 violations you did not want Mr. Jackson negotiating consent agreements. As a result of he had a prehearing conference with the parties there has not been any discussions on consent agreements, but for the policy statement that the Commission made would not be unusual to have a consent agreement before the hearing. So if that's what you're concerned about. Commissioner Duncan stated that his concern is to give Mr. Bickmore and his counsel a chance to speak on their behalf. Attorney Guay stated that they can certainly speak on their behalf but let counsel make that decision anything that is said could then subsequently be used at a hearing. Commissioner Duncan asked if they have that right to decide if they want to speak or not. Attorney Guay stated that they would have that right. Commissioner Dresser stated that she would like to hear personally whether a consent agreement is anything that is even going to be entertained before we make any decisions. Attorney Rancourt stated that he is certainly prepared to speak about the procedural aspects of how we normally work these things through and whether or not we go to hearing. He is not here to comment on evidence. You are the parties of fact. You in fact are the jury. Any ex parte extraneous information that you obtain is not permitted under the thing so for him to comment on the evidence is totally improper. Commissioner Dresser asked if there was any opposition. No objections. Attorney Guay stated that he does feel compelled to make a statement though. This is being recorded and anything you say will be discoverable. Attorney Rancourt stated that he understood. He wanted to discuss the procedure. Like any other adjudicatory arena in the State of Maine, consent agreements are a normal way of life. Sometimes you can do them and sometimes you can't do them. His frustration with this process when he first got involved was there was no one to negotiate with because there was no one authorized to enter into any kind of discussions or negotiations. He did note that there were multiple individuals that their cases were continued and some of them were multiple violations and some of them were serious violations. His understanding of the agreement for all of those were to be continued to June and if they did not have any further violations in essences those alleged violations would be disposed of. His client was the only individual was excluded from that group or class. He doesn't understand why because there were multiple violations and serious violations. He thinks that was somewhat selective. It was selective. You certainly do have the power to do that or not do it. He thinks in fairness he should have been offered the same kind of avenue to resolve this, but he was not. So they are forced with either negotiating some kind of resolution or going to a full blown adjudicatory hearing which he is fully prepared and able to do. He would rather be able to resolve this in a way that everybody gets some kind of satisfaction. This is an extremely serious allegation which could sideline his client from racing in almost any venue in the United States in the future. He thinks that the Commission should reconsider including him in that group with the same potential penalties if he violates them.

Commissioner Timmons spoke about the licensee's reputation and record and it's a pretty good record. Attorney Guay stated for the record that there are no agreements with the other people. The State moved to continue the cases until June and since each party was present and they had the right to put their case on that day we polled them and called the docket for each case and asked whether or not they would join in and agree to the motion to continue. There was no consent agreement issued on the previous violations. Attorney Rancourt stated that there were three others that were not on the docket that day where Mr. Jackson was instructed to contact them to specifically inquire whether or not they wanted to be included in this, and further it's his understanding that a decision was specifically made that his client not be included in that group to continue the cases until the June commission meeting. Commissioner Dresser stated that there was one that was not on the agenda but there were two that were not able to be there that day that were on the agenda. Attorney Guay stated that based on their case conference the most likely date of your clients hearing would be June anyway. Commissioner Dresser stated that any medication violation within the timeframe would result in an automation adjudicatory hearing. That would be as to any new alleged violation. What would happen to the probationary status during that time? Commissioner Timmons stated that in number two say that the probationary period would be 360 days and he tried to come up with a way in 180 days which would be six months the executive director would be able to determine if any violations had occurred of our rules. And if they did not the probationary period would end. But then he needed to say something because if the medication rule was violated anytime within these timeframes it would automatically be back before this board. Commissioner Dresser stated that if we enter into a consent agreement as to the current violation it's going to be closed. We can't reopen it. What are your thoughts as to what would happen if there was a violation within those 180 days? What effect would that have on the probationary status? Commissioner Timmons stated he sees what she is saying but he's not sure. Attorney Guay stated that there are two ideas. One is a continuance and the other is to enter into negotiations of a consent agreement. After a brief recess, Attorney Guay stated that it was his understanding that the Commissioners would like to have a response by Mr. Bickmore's counsel. Attorney Rancourt stated that he has discussed this matter with his client and they would be amenable and support the idea of a continuance for 360 or 365 days with the understanding that if there was no drug violation activity or allegations during that time period that this matter would be dismissed with prejudice. We find that acceptable. We would obviously not object to the continuance or issues of delay or anything like that. Commissioner Dresser thanked him. Commissioner Duncan stated that he would make a motion to grant the hearing office authority to grant a continuance until April 15, 2014. Attorney Guay stated that counsel wants another part of the motion that if there are no violations of Chapter 11 before that hearing. Commissioner Duncan stated that he would rephrase that on the same foundation as we've done previously on positive tests in 2013 handled the same way with the extension of the extra days. Commissioner Dresser stated substituting in 365 days as opposed to 180. Commissioner Duncan stated that everything else would be the same other than the amount of days. Attorney Guay stated that the motion includes that no allegations just so you don't mind just to clarify through April of 2015 allegations of violations of rule of Chapter 11 the case number (Mr. Jackson can insert that) shall be dismissed with prejudice. Commissioner Timmons seconded the motion. Commissioner Dresser stated that we have a motion and a second. Does anyone have anything that they would like to add? Commissioner Tracy stated that they've had a good discussion. Commissioner Dresser called for a vote. It was unanimous 5-0. Attorney Guay stated that he would like to open a prehearing conference on the matter of the State verses Eric Bickmore for alleged drug violations on September 1, 2013. For the record, Mr. Bickmore is present and is represented by counsel, and the State is represented by Mr. Jackson. Mr. Jackson and Mr. Bickmore the Commission has just voted authority to the hearing officer to offer a continuance of this case until April 15, 2015 regular meeting of the Commission. Mr. Jackson, do you object? Mr. Jackson stated that he has no objection. Attorney Guay asked Attorney Rancourt if

he objected. Attorney Rancourt stated that he had no objection to that. Attorney Guay stated that based on hearing no objections and granting of the authority by the Commission this hearing will be continued until the regular Commission meeting of April 2015. This matter is closed.

The meeting adjourned at 11:17 a.m.

Respectfully submitted by:
Henry W. Jackson
Executive Director